IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.529 OF 2003

Alka Ashok Pawar & Ors. .. Appellants.
Vs.
Prabhavati Hanumant Zanzane & Ors .. Respondents.

Mr.Milind Deshmukh for the appellants.
Mr.G.S.Godbole for respondent no.1.

CORAM : D.B.BHOSALE, J.
DATED : 12TH DECEMBER, 2006

P.C.:

. Heard learned counsel for the parties.

2. This second appeal by the original plaintiffs is directed against the judgment and order dated 27.7.2001 by which the appeal filed by respondent no.1 came to be allowed, quashing and setting aside the judgment and decree dated 19.12.1997 passed in regular civil suit no.273 of 1994. The suit was instituted by the appellants for declaration to the effect that the judgment and decree dated 14.9.1992 passed by the very same court in regular civil suit no.410 of 1988 be declared null and void and the properties may be partitioned afresh and they may be given 1/8th share in the suit properties. According to Mr.Deshmukh, learned counsel for the appellants, the decree dated 14.9.1992 passed in the earlier suit was obtained by

fraud. The decree dated 14.9.1992 was based on the pursis Exhibit-12 allegedly filed by the appellants in the earlier suit relinquishing their right in the joint family properties. In the present suit they have denied that such pursis was ever filed by them. He submitted that the trial Court has appreciated this aspect of the matter in proper prespective and rightly held that the decree in earlier suit was obtained by fraud. I perused the judgment of the courts below and in particular paragraph 15 to 20 in the judgment of the appeal court. It appears from the material on record that the appellants and other respondents colluded to grab the share of respondent no.1, the widow of the appellant's deceased brother. The appellants seem to have lost any right in the suit properties. They alongwith other respondents executed the sale deeds in favour of respondent no.6 herein and had received the proceeds of their share. The present suit appears to be an attempt to create further hurdle in way of respondent no.1 and to deprive her share in the suit property which had been declared by the judgment and order dated 14.9.1992 in the earlier suit filed by her. The appellants, though, were aware about the judgment dated 14.9.1992, chose not to challenge the same and after waiting for a period of two years filed the present suit. In my opinion, no substantial question of law is involved in the present

appeal. Considering the findings recorded by the court below and as I find that there is sufficient material to sustain those findings and considering extremely limited jurisdiction of this court under section 100 of the Code of Civil Procedure to disturb the findings of fact this second appeal deserves to be dismissed. Order accordingly.

(D.B.Bhosale, J.)